

§ 76.30

(3) Protect witnesses from harassment or undue embarrassment.

(d) The Judge shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the Judge, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination.

(f) Upon motion of any party, the Judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This part does not authorize exclusion of the following:

(1) The respondent;

(2) An individual whose presence is shown by a party to be essential to the presentation of its case.

§ 76.30 Evidence.

(a) The Judge shall determine the admissibility of evidence.

(b) Except as provided in this part, the Judge shall not be bound by the Federal Rules of Evidence. However, the Judge may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The Judge shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Relevant evidence may be excluded if it is privileged under federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The Judge shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the Judge pursuant to 28 CFR 76.27.

§ 76.31 Standards of conduct.

(a) All persons appearing in proceedings before a Judge are expected to

28 CFR Ch. I (7–1–02 Edition)

act with integrity and in an ethical manner.

(b) The Judge may exclude parties, witnesses, and their attorneys for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against *ex parte* communications. The Judge shall state in the record the cause for suspending or barring an attorney from participation in a proceeding. Any attorney so suspended or barred may appeal to the Chief Administrative Hearing Officer for the District, or if there is no Chief Administrative Hearing Officer, to the Attorney General but no proceeding shall be delayed or suspended pending disposition of the appeal; provided, however, that the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney.

§ 76.32 Hearing room conduct.

Proceedings shall be conducted in an orderly manner. The consumption of food or beverage, smoking, or rearranging of courtroom furniture, unless specifically authorized by the Judge, is prohibited.

§ 76.33 Legal assistance.

The Judge does not have authority to appoint counsel, nor can it refer a party to an attorney.

§ 76.34 Record of hearings.

(a) *General.* Unless otherwise agreed by the parties, a verbatim written record of all hearings shall be kept. All evidence upon which the Judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification and incorporated into the record. Upon completion of the transcript, the transcript shall be filed by the official court reporter with the Judge, who will notify the parties. Transcripts may be obtained by the parties and the public from the official court reporter of record. Unless otherwise ordered by the